



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

October 20, 2020

MEMO ENDORSED

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Via ECF

Honorable Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Martinez v. United States of America et al.*, 20 Civ. 7275 (VEC)

Dear Judge Caproni:

This Office represents the United States of America (the “United States” or the “government”) in the above-referenced action, in which Plaintiff Richard Martinez (“Plaintiff”) asserts claims under the Federal Tort Claims Act, *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and state law stemming from Plaintiff’s medical treatment at the Metropolitan Correctional Center (“MCC”) and by other, nongovernmental medical providers.

I write respectfully to request an adjournment of the conference scheduled for October 30, 2020, at 11:00 a.m.,¹ an extension of time for the joint letter and proposed case management plan currently due on October 22, 2020, and an extension of time for the United States to respond to the complaint until 60 days after the completion of service on all federal defendants in this case. Counsel for all other parties who have appeared consent to these requests.

This action was commenced on September 4, 2020, *see* Dkt. No. 1, and the Court scheduled the initial conference by order dated September 10, 2020, Dkt. No. 23. In that order, the Court “encourage[d] plaintiff[] to serve defendants promptly.” Dkt. No. 23, at 2 (emphasis omitted).

However, while Plaintiff served the U.S. Attorney’s Office on September 21, Dkt. No. 27, he did not complete service on the United States under Rule 4(i) of the Federal Rules of Civil Procedure until October 6, when he served the Attorney General by U.S. Certified Mail, *see* Dkt. No. 31 (affidavit of service upon the Attorney General).²

¹ The Court’s order dated September 10, 2020, states that the conference will be held on “October 30, 2020 at 11:00 p.m.” Dkt. No. 23. The government respectfully infers that the order may have been intended to set the conference for 11:00 a.m. on that date.

² The tracking information provided by Plaintiff can be accessed at https://tools.usps.com/go/TrackConfirmAction?qt_c_tLabels1=70191120000076572255.

Moreover, the docket does not contain any indication that Plaintiff has begun the process of serving individual federal defendants Robert Beaudouin, M.D.; Mandeep Singh, P.A.; Yoon Kang, P.A.; and the Warden of MCC (all of whom are alleged to be employees or contractors at MCC) as required under Rule 4(i)(3). Thus, those defendants' time to respond to the complaint has not yet started to run.³ Plaintiff's counsel has represented that Plaintiff intends to attempt service on these defendants this week.

The individual federal defendants may be entitled to Department of Justice ("DOJ") representation in this action. *See* 28 C.F.R. § 50.15(a). Because the individual federal defendants have not yet been served, however, to my knowledge they have not yet begun the process of seeking DOJ representation in this matter.

The United States respectfully submits that it would be premature at this time for the Court to hold a Rule 16 conference and enter a discovery schedule, and respectfully requests an adjournment until after all the federal defendants have been served, are represented by counsel in this matter, and have responded to the complaint. Therefore, the government respectfully requests that the Court adjourn the conference currently scheduled for October 30, and extend the deadline for the letter and proposed case management plan currently due on October 22, until a date at least 60 days after proper service has been completed upon all federal defendants, thus affording them the opportunity to review and respond to the complaint.

Moreover, the United States anticipates moving to dismiss the complaint at least in part, and the individual federal defendants may move to dismiss the *Bivens* claims against them. The government respectfully requests that the Court extend the United States' deadline to respond to the complaint until 60 days after all federal defendants are properly served under Rule 4(i). Such an extension will align the federal defendants' responses to the complaint on an appropriate date after all federal defendants are properly served and will permit an orderly schedule for responses to the complaint and any motion practice.

This Office reserves all rights and defenses in this matter on behalf of the individual federal defendants, on whose behalf this Office cannot appear substantively unless and until the Civil Division of DOJ makes a final determination as to whether they will receive DOJ representation.

This is the United States' first request to adjourn or extend deadlines in this matter. Counsel for Plaintiff has indicated his consent to this request, as have the attorneys for co-defendants Kingsbrook Jewish Medical Center, the GEO Group, Inc., the Brooklyn Hospital Center, and Dr. Phillip McPhearson.

³ Plaintiff also names as defendants "John/Jane Does 1-10," alleged to be employees of the Bureau of Prisons or MCC, but the complaint does not provided sufficient information about them to permit their identification.

Thank you for your consideration of this matter.

Respectfully submitted,

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cc: Counsel of record (via ECF)

The October 30, 2020 IPTC is ADJOURNED *sine die*. Defendant United States' deadline to respond to the Complaint is ADJOURNED *sine die*, pending service on all federal defendants. Plaintiff's counsel is again instructed to serve all Defendants as expeditiously as possible. Plaintiff must file a letter updating the Court within three days of having served all named Defendants. After Plaintiff has served all named Defendants, the Court will issue an order setting a new date for the IPTC and scheduling a new deadline for Defendant United States and the other federal defendants to respond to the Complaint. The parties' joint letter and proposed Case Management Plan will be due the Thursday of the week before the rescheduled IPTC.

SO ORDERED.



10/20/2020

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE